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OFFICE OF PETITIONS

In re Application of :
Demmy, et al. :
Application No. 10/764,103 : **DECISION ON PETITION**
Filed: January 23, 2004 : **UNDER 37 CFR 1.78(a)(6)**
Attorney Docket No. 2944 (203-4027) :

This is a decision on the petition under 37 CFR 1.78(a)(6), filed January 29, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

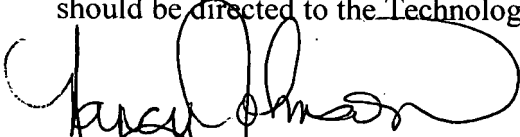
Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

The instant application is abandoned as of January 27, 2007 for failure to timely submit a proper reply to the Office action mailed October 26, 2006. Notice of Abandonment was mailed April 27, 2007.

Application No. 10/764,103

In view thereof, the instant petition is subject to dismissal.

Any inquiries concerning this decision may be directed to Alesia M. Brown at (571) 272-3205. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

A handwritten signature in black ink, appearing to read 'Nancy Johnson', is written over the printed name and title.

Nancy Johnson
Petitions Attorney
Office of Petitions